IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

WEDNESDAY, THE 23RD MAY 2007 / 2ND JYAISHTA 1929

CRL.A.No. 361 of 2004()

AGAINST THE JUDGMENT IN CC.2178/2001 of JUDL. MAGISTRATE OF FIRST CLASS-I, KOCHI

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APPELLANT/COMPLAINANT:

M/S. WROCKWELL AGENCIES,
P.B.NO.3635, XXXX/6394, T.D. ROAD, ERNAKULAM,
REP. BY POWER OF ATTORNEY HOLDER AND SALES MANAGER
MR.K.P.HARIDAS.

BY ADVS. SRI.M.P.ABRAHAM (SR.)
SRI.ALEXANDER PETER

RESPONDENTS/ACCUSED & STATE:

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1. T.P.MURALEEDHARAN,
AYYIL HOUSE, POOLENKKARA, PANTHEERAMKAVU P.O.,
CALICUT.

2. STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.P.V.KUNHIKRISHNAN-R1
PUBLIC PROSECUTOR SRI. P. RAVEENDRA BABU -R2

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 23/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.THANKAPPAN, J.

CRL. APPEAL NO. 361 OF 2004

Dated this the 23rd day of May, 2007

JUDGMENT

This appeal is filed against the order in C.C.No.2178 of 2001 on the file of the Judicial First Class Magistrate's Court-I, Kochi. The appellant filed the complaint alleging that the accused - first respondent herein issued a cheque in favour of the appellant which when presented to the bank for encashment was dishonoured for want of sufficient funds in the account of the first respondent and thereby the first respondent committed offence punishable under Section 138 of the Negotiable Instruments Act, 1881. The learned Magistrate took cognizance of the complaint and issued summons to the first respondent. Since the first respondent did not appear before the court below, the case was posted for taking necessary steps under Sections 82 and 83 Cr.P.C. and for issuing non-bailable warrant. But, neither the accused nor his counsel appeared and hence the learned Magistrate passed the impugned order.

2. It is seen that the learned Magistrate passed the impugned order

under Sections 256(1) and 204(4) Cr.P.C. Mention of Section 204(4) Cr.P.C. might be a mistake on the part of the learned Magistrate as the impugned order is passed only under Section 256(1) Cr.P.C. However, after going through the order, this Court is of the view that the impugned order is not in accordance with the principles laid down by this Court in the decisions reported in **Don Bosco v. Partech Computers Ltd., 2005(2) K.L.T. 1003** and **G.F.S. Chit & Loans (P) Ltd. v. Rajesh, 2006(3) K.L.T. 825**. iIn the above judgments, this Court had categorically held that mere absence of the complainant by itself cannot be taken as a ground for acquittal of the accused and that the court should consider whether personal attendance of the complainant was essential for the progress of the case. The Apex Court had also taken the same view in the decision reported in **Associated Cement Co.Ltd. v. Keshvanand , 1998(1) K.L.T. 179 (SC)**.

3. In the above circumstances, the impugned order is set aside and the matter is remanded to the court below for fresh disposal from the stage at which the impugned order was passed. It is made clear that no further steps are necessary to get the presence of the first respondent before the court below as he is represented by a counsel of this Court. The court below shall proceed with the matter after issuing a formal notice.

The Crl. Appeal is allowed by way of remand. The parties shall appear before the court below on 30.6.2007.

(K.THANKAPPAN, JUDGE)

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